THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 2401-0252-10
ANGELA PLATT,	)	
Employee	)	
	)	Date of Issuance: May 15, 2012
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	STEPHANIE N. HARRIS, Esq.
	)	Administrative Judge

Angela Platt, Employee *Pro-Se*
W. Iris Barber, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 2, 2009, Angela Platt ("Employee") filed a petition for appeal with the Office of Employee Appeals ("the OEA" or "the Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") action of terminating her employment through a Reduction-in-Force ("RIF"). The effective date of the RIF was November 2, 2009. Employee's position of record at the time her position was abolished was a Social Worker at Webb-Wheatley Education Campus ("Webb-Wheatley"). Employee was serving in Educational Service status at the time she was terminated.

I was assigned this matter on February 6, 2012. On February 15, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations ("February 15th Order"). Agency complied, but Employee did not respond to the February 15th Order. On March 30, 2012, I issued an Order for Statement of Good Cause to Employee ("March 30th Order"). Employee was ordered to submit her Statement of Good Cause by April 10, 2012 ("April 10th Order"), based on her failure to provide a response to the February 15th Order. As of the date of this decision, Employee has not responded to the aforementioned Orders. After reviewing the record, I determined that there are no material facts in dispute and therefore a hearing is not warranted. The record is now closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.03 (2001).

ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

> The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

Agency submits that because Employee was a probationary employee at the time the RIF was conducted, OEA lacks jurisdiction over Employee's appeal.[1] This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions not relevant to this case, of permanent employees in the Career and Education Service who are not serving in a probationary period, or who have successfully completed their probationary period. However, D.C. Code § 1-628.08(c) gives this Office limited jurisdiction over Career and Educational service employees, in RIF cases, regardless of the employee's date of hire. Here, although Employee was still a probationary employee at the time of the RIF, based on the above referenced section, Employee is still entitled to the regular RIF procedures found in D.C. Code § 1-624.08, which includes one round of lateral competition and thirty (30) days written notice prior to the effective date of the RIF. As such, I find that OEA has jurisdiction over Employee's appeal.

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor's Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.[2]

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[1] Agency's Brief at p. 2 (March 7, 2012).
[2] *See* Agency's Answer, Tab 1 (January 7, 2010).

Although the instant RIF was authorized pursuant to D.C. Code § 1-624.02,[3] which encompasses more extensive procedures, for the reasons explained below, I find that D.C. Official Code § 1-624.08 ("Abolishment Act") is the more applicable statute to govern this RIF.

Specifically, section § 1-624.08 states in pertinent part that:

> (a) ***Notwithstanding*** *any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect* for the fiscal year ending September 30, 2000, and *each subsequent fiscal year*, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).
>
> (b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.
>
> (c) ***Notwithstanding*** *any rights or procedures established by any other provision of this subchapter*, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).
>
> (d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.
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> (e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

In *Mezile v. D.C. Department on Disability Services*,[4] the D.C. Superior Court found that "the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government

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[3] D.C. Code § 1-624.02 states in relevant part that:

> (a) Reduction-in-force procedures shall apply to the Career and Educational Services… and shall include:
> (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;
> (2) One round of lateral competition limited to positions within the employee's competitive level;
> (3) Priority reemployment consideration for employees separated;
> (4) Consideration of job sharing and reduced hours; and
> (5) Employee appeal rights.

can only use it during times of fiscal emergency." The Court also found that both laws were current and that the government triggers the use of the applicable statute by using "specific language and procedures."[5]

However, the Court of Appeals took a different position. In *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools,* [6] DCPS conducted a 2004 RIF "to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005." The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act ("the Act") instead of "the regular RIF procedures found in D.C. Code § 1-624.02."[7] The Court stated that the "ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF."[8]

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.[9] The Act provides that, "notwithstanding any rights or procedures established by any other provision of this subchapter," which indicates that it supersedes any other RIF regulations. The use of the term 'notwithstanding' carries special significance in statutes and is used to "override conflicting provisions of any other section."[10] Further, "it is well established that the use of such a 'notwithstanding clause' clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other sections."[11]

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.[12] Moreover, the persuasive language of § 1-624.08, including the term 'notwithstanding,' suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, I am primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated may only contest before this Office:

1. That she did not receive written notice thirty (30) days prior to the effective date of her separation from service; and/or

2. That she was not afforded one round of lateral competition within her competitive level.

Employee's Position

In her Petition for Appeal, Employee requests an evidentiary hearing. Employee also asserts that her removal "was a pre-tex [sic] for termination and an adverse action due to insufficient

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[4] No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).
[5] *Id.* at p. 5.
[6] 960 A.2d 1123, 1125 (D.C. 2008).
[7] *Id.*
[8] *Id.*
[9] *Id*.
[10] *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).
[11] *Id.*
[12] *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012.)

cause."[13] Employee states that she should not have been subject to the instant RIF because the statutory policies governing RIFs were not accurately and fairly applied; the RIF procedures were applied in a discriminatory manner based upon Employee's age, union activities, and other legally irrational reasons; and the RIF decision was based upon false, inadequate, inaccurate, and unreliable performance data.[14] Additionally, Employee requests "[r]eturn of employment, back salary, my record expunged, compensation of anxiety, mental pain [and] anguish, sent to school centrally located to my home, return of annual leave, a fair/just evaluation, summer pay, [and] reinstatement."[15]

Agency's Position

Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of her termination.[16] Agency further maintains that it utilized the proper competitive factors in implementing the RIF and that the lowest ranked Social Worker, Employee, was terminated as a result of the round of lateral competition. [17]

RIF Procedures

Under Title 5 DCMR § 1501.1, the Superintendent of DCPS Schools is authorized to establish the competitive areas when conducting a RIF so long as those areas are based "upon all or a clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office." For the 2009/2010 academic school year, former DCPS Chancellor Rhee determined that each school would constitute a separate competitive area. In accordance with Title 5, DCMR § 1502.1, competitive levels in which employees subject to the RIF competed were based on the following criterion:

1. The pay plan and pay grade for each employee;

2. The job title for each employee; and

3. In the case of specialty elementary teachers, secondary teachers, middle school teachers and teachers who teach other specialty subjects, the subject taught by the employee.

Here, Webb-Wheatley was identified as a competitive area, and Social Worker was determined to be the competitive level in which Employee competed. According to the Retention Register provided by Agency, there were two (2) Social Worker positions subject to the RIF. Of the two positions, one (1) position was identified to be abolished. Because Employee was not the only

[13] Petition for Appeal (December 2, 2009).
[14] *Id.*
[15] *Id.*
[16] Agency Brief at pp. 2-5 (March 7, 2012).
[17] *Id*. at pp. 5-6 (March 7, 2012). School-based personnel constituted a separate competitive area from nonschool-based personnel and are precluded from competing with school-based personnel for retention purposes.

Social Worker within her competitive level, she was required to compete with another employee in one round of lateral competition.

According to Title 5, DCMR § 1503.2 *et al.*:

> If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:
>
> (a) Significant relevant contributions, accomplishments, or performance;
>
> (b) Relevant supplemental professional experiences as demonstrated on the job;
>
> (c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and
>
> (d) Length of service.

Based on § 1503.1, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

> (a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (75%)
>
> (b) Significant relevant contributions, accomplishments, or performance – (10%)
>
> (c) Relevant supplemental professional experiences as demonstrated on the job – (10%)
>
> (d) Length of service – (5%)[18]

Agency argues that nothing within the DCMR, applicable case law, or D.C. Official Code prevents it from exercising its discretion to weigh the aforementioned factors as it sees fit.[19] Agency cites *to American Federation of Government Employees, AFL-CIO v. OPM*,[20] wherein the Office of Personnel Management was given "broad authority to issue regulations governing the release of employees under a RIF…including the authority to reconsider and alter its prior balance of factors to

[18] It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in § 1503.2. Thus, Agency is not required to assign equal values to each of the factors. *See White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).
[19] Agency Brief at pp. 5-6 (March 7, 2012).
[20] 821 F.2d 761 (D.C. Cir. 1987).

diminish the relative importance of seniority."[21] I agree with this position and find that Agency had the discretion to weigh the factors enumerated in 5 DCMR 1503.2, in a consistent manner throughout the instant RIF.

Competitive Level Documentation Form

Agency employs the use of a Competitive Level Documentation Form ("CLDF") in cases where employees subject to a RIF must compete against each other in lateral competition. In conducting the instant RIF, the principal of Webb-Wheatley was given discretion to assign numerical values to the first three factors enumerated in Title 5, DCMR § 1503.2, *supra*, as deemed appropriate, while the "length of service" category was completed by the Department of Human Resources ("DHR").

Employee received a total of three and a half (3.5) points on her CLDF, and was, therefore, ranked the lowest in her respective competitive level. Employee's CLDF stated, in pertinent part, the following:

> "Ms. Platt is not effectively meeting the needs of the school. There are consistent issues with her attendance and timeliness. She doesn't add any value to the overall school climate or culture. I regularly have parents and teachers complain about her lack of professionalism. Many teachers are reluctant to send students to work with her as they fear that the counseling work is so ineffective that it actually makes the issues worse. On numerous occasions I've worked with Ms. Platt to build a schedule that increases her effectiveness only to have her undermine these efforts later. Her impact is so minimal that there is no detrimental effect when she is absent or missing. On a number of occasions, Ms. Platt has been placed in charge of initiatives. Time and time again, these duties are not tended to or are done so poorly that another staff member needs to be [sic] pick up the pieces later."[22]

Office or school needs

This category is weighted at 75% on the CLDF and includes: curriculum, specialized education, degrees, licenses or areas of expertise. Employee received a total of zero (0) points out of a possible ten (10) points in this category; a score much lower than the other employee within her competitive level, who received eight (8) points.[23] Employee argues that the documentary evidence does not support the score afforded to her and was based on "false, inadequate, inaccurate, and unreliable performance data."[24] However, Employee has failed to provide credible evidence that would bolster a score in this area, such as proof of degrees obtained pertinent to her work, licenses or other specialized education. Further, there is no indication that any supplemental evidence would supplant the higher score received by the remaining employee in the competitive level who was not

[21] *Id.*
[22] Agency Brief, Exhibit B (March 7, 2012).
[23] *Id.*
[24] *See* Petition for Appeal (December 2, 2009).

separated from service. Moreover, this Office cannot substitute its judgment for that of the principal at Webb-Wheatley. The principal of Webb-Wheatley was given the discretion to complete Employee's CLDF and had wide latitude to invoke his managerial discretion. With respect to the category of Office and School needs, I find that I will not substitute my judgment for that of the principal of Webb-Wheatley as it relates to the score he accorded Employee and her colleague in the instant matter.

Relevant significant contributions, accomplishments, or performance

This category is weighted at 10% on the CLDF. Employee received zero (0) points in this area. Employee made similar arguments as noted in the preceding section in order to substantiate her contention that her CLDF was based on inaccurate and unreliable data. However, Employee has failed to provide any supplemental evidence that would supplant the higher score received by the remaining employee in the competitive level who was not separated from service. I find that the evaluation of this category falls within the rubric of managerial discretion.

Relevant supplemental professional experiences as demonstrated on the job

This category accounts for 10% of the CLDF. Employee received one (1) point in this area. The principal of Webb-Wheatley noted in the CLDF stating that Employee's former work experience with the Child and Family Service was helpful on certain occasions.[25] While Employee does not provide any documentation to supplement additional points being awarded in this area, the undersigned reiterates that the principal of Webb-Wheatley was given discretion to assess Employee in this category.

Length of service

This category, which was completed by DHR, includes credit for years of service, District residency, veterans' preference, and prior outstanding or exceeds expectation performance rating within the past year. The length of service calculation, in addition to the other factors, were weighted and added together, resulting in a ranking for each competing employee.

Employee has not provided any supporting documentary evidence to support any additional points being awarded in this category. Employee received a total of one (1) point in this category. Agency has provided an affidavit from Peter Weber, who served as the Interim Director of Human Resources during the time of the instant RIF.[26] Mr. Weber states that he was responsible for computing employees' length of service for the instant RIF and used the DHR official Peoplesoft system to obtain data for the calculations, which appear in Employee's CLDF. Therefore, based on the evidence of record, I find that Agency properly calculated this number.

Moreover, in reviewing the documents of record, Employee does not offer any statutes, case law, or other regulations to refute Agency's position regarding the principal's authority to utilize discretion in completing an employee's CLDF during the course of the instant RIF. In *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia,*[27] the D.C. Court of Appeals, in evaluating several union arguments concerning a RIF,

[25] Agency Brief, Exhibit B (March 7, 2012).
[26] Agency Brief, Exhibit B (March 7, 2012).
[27] 109 F.3d 774 (D.C. Cir. 1997).

stated that "school principals have total discretion to rank their teachers" and noted that performance evaluations are "subjective and individualized in nature."[28] According to the CLDF, Employee received a total score of three and a half (3.5) points after all of the factors outlined above were tallied and scored. The remaining social worker in Employee's competitive level received a total score of sixty-two and a half (62.5) points. Employee has not proffered any evidence to suggest that a re-evaluation of her CLDF scores would result in a different outcome in this case.[29]

The primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.[30] This Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if "managerial discretion has been legitimately invoked and properly exercised."[31] Accordingly, I find that the Principal of Webb-Wheatley had discretion in completing Employee's CLDF, as he was in the best position to observe and evaluate the criteria enumerated in DCMR §1503.2, *supra*, when implementing the instant RIF. I, therefore, find that Agency did not abuse its discretion in completing the CLDF, and Employee was properly afforded one round of lateral competition as required by D.C. Official Code § 1-624.08.

Thirty (30) days written Notice

Title 5, §1506 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 1506.1 states that "an employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. The notice shall state specifically what action is taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights." Additionally, D.C. Official Code § 1-624.08(e), which governs RIFs, provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added).

Here, the record shows that Employee received her RIF notice on October 2, 2009, and the RIF effective date was November 2, 2009. The RIF notice states that Employee's position was eliminated as part of a RIF. The RIF notice also provided Employee with information about her appeal rights. Further, Employee has not alleged that she did not receive thirty (30) days notice prior to the effective date of the RIF. Accordingly, I find that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

Evidentiary Hearing

According to Employee, an evidentiary hearing is needed to validate the truthfulness of the principal's statements contained within her CLDF. OEA Rule 619.2[32] states in part that an Administrative Judge can "require an evidentiary hearing, if appropriate." Additionally, OEA Rule 625.2 indicates that it is within the discretion of the administrative judge ("AJ") to either

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[28] *See also American Fed'n of Gov't Employees, AFL-CIO v. Office of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions.)

[29] See *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law.)

[30] *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

[31] *See Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

[32] 59 DCR 2129 (March 16, 2012); *See also* OEA Rule 619.2, 59 DCR 2129 (March 16, 2012).

grant or deny a request for an evidentiary based on whether or not the AJ believes that a hearing is necessary.[33] After reviewing the record, the undersigned has determined that there are no material facts in dispute and therefore Employee's request for an evidentiary hearing is denied.

Further, it appears that Employee's basis for requesting an evidentiary hearing is to be afforded an opportunity to explore and undoubtedly dispute "…interpretations of their worth against [the] principals' evaluations."[34] While it is unfortunate that Agency had to release any employee as a result of budgetary constraints, there is nothing within the record to corroborate that the RIF was conducted unfairly.

Discrimination Claims and Grievances

Employee alleges that the instant RIF was a pretext for termination and that RIF procedures were applied in a discriminatory manner, based in part on Employee's age. However, Employee has provided no evidence or documentation to corroborate this claim, which renders it a generalized unsubstantiated allegation. Further, D.C. Code § 2-1411.02, specifically reserves complaints of unlawful discrimination to the Office of Human Rights ("OHR"). Per this statute, the purpose of OHR is to "secure an end to unlawful discrimination in employment…for any reason other than that of individual merit." Complaints classified as unlawful discrimination are described in the District of Columbia Human Right Act.[35] Additionally, District Personnel Manual ("DPM") § 1631.1(q) reserves allegations of unlawful discrimination to Office of Human Rights. Moreover, the Court in *Anjuwan v. D.C. Department of Public Works*[36] held that OEA's authority over RIF matters is narrowly prescribed. This Court explained that OEA lacks the authority to determine broadly whether the RIF violated any law except whether "the Agency has incorrectly applied…the rules and regulations issued pursuant thereto." This court further explained that OEA's jurisdiction cannot exceed statutory authority and thereby, OEA's authority in RIF cases is to "determine whether the RIF complied with the applicable District Personnel Statutes and Regulations dealing with RIFs."[37]

However, it should be noted that the Court in *El-Amin v. District of Columbia Dept. of Public Works*[38] stated that OEA may have jurisdiction over an unlawful discrimination complaint if the employee is "contending that he was targeted for whistleblowing activities outside the scope of the equal opportunity laws, or that his complaint of a retaliatory RIF is different for jurisdictional purposes from an independent complaint of unlawful discrimination or retaliation…"[39] Here, Employee's claims as described in her submissions to this Office do not allege any whistleblowing activities as defined under the Whistleblower Protection Act. Thus, I find that Employee's claims of age discrimination fall outside the scope of OEA's jurisdiction.

Employee further alleges that she was terminated in part due to her union activities.[40] Complaints that relate to Employee's union activities or the collective bargaining agreement

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[33] *See Gray-Avent v. D.C. Department of Human Resources*, OEA Matter No. 2401-0145-08, *Opinion and Order on Petition for Review* (July 30, 2010).
[34] *Washington Teachers' Union* at 780.
[35] D.C. Code §§ 1-2501 *et seq.*
[36] 729 A.2d 883 (December 11, 1998).
[37] *See Gilmore v. Board of Trustees of the University of the District of Columbia*, 695 A.2d 1164, 1167 (D.C. 1997).
[38] 730 A.2d 164 (May 27, 1999).
[39] *El-Amin*; *citing Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 666 (D.C. 1994).
[40] *See* Petition for Appeal (December 2, 2009).

governing the union are grievances and do not fall within the purview of OEA's scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. This is not to say that Employee may not challenge these issues elsewhere; however, the undersigned is unable to address the merits of such claims.

CONCLUSION

Based on the foregoing, I find that Employee's position was abolished after she properly received one round of lateral competition and was given thirty (30) days written notice prior to the effective date of the RIF. I therefore conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08.

ORDER

It is hereby **ORDERED** that Agency's action of abolishing Employee's position through a Reduction-In-Force is **UPHELD**

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.
Administrative Judge